

# The Empire of Principle

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2015-06-22T21:59:14

When talking about the justice deficit of the European project, immediately two issues come to the fore. There is the creeping expansion of economic governance happening at the expense of democratic politics, which is allowed and facilitated by the now dominant interpretation of our political values. And then there are the institutional arrangements, providing legitimacy to a series of decisions at the EU level we call “austerity measures”. The economic rationality of austerity, which is dictating how we do Europe now, has been made possible by a particular understanding of the European project which perceives Europe as a venture of (economic) governance.

While institutions keep working, with reference to the same rules and procedures, an increasing number of fundamental political decisions is made literary “behind closed doors” of expert bodies, mainly justified as economic inherent necessities. The shift of power from political representatives to independent experts and to the judiciary, as seen in the strengthened position of the ECJ for economic issues represents a substantial change in the political landscape of Europe. Suddenly, the idea of Europe and the praxis of European integration is most visibly represented by the austerity paradigm of Angela Merkel.

This discourse of austerity ceases to be dispositional and becomes legitimized and entrenched with reference to (legal) principles, which are the foundations of the European project in the first place. This runs parallel to the tendency to treat austerity as quasi-teleological, and as self-evidently a good thing. The reference to seemingly universal and principled vocabulary found in pre-existing authoritative statements (treaties, conventions and ECJ decisions) allows us to conclude that austerity has been properly justified. Events in Europe are subsequently subsumed under the remit of the austerity paradigm and not vice versa and the consequences prescribed by austerity principles then simply follow. In other words, principles which were supposedly designed to re-act, suddenly perform primarily pre-scriptive and classificatory functions. They do Europe for us.

Public statements like “there is no alternative” tell us much more about the relation to reality than about this reality itself, since they rather express our reflective sense than analyse the current state of affairs. They gradually become more fundamental, encompassing social structures and effectively begin to define the terms of the debate; they legitimate certain frames over others and create ‘the givens’ of Europe while simultaneously defining away alternative solutions, forms and imaginaries as unthinkable. Such interpretative monopoly is built on the ability to construct the problem in a certain way, to define the issues at hand in a certain way and as a result define the solutions as well.

The idea of ‘[Cosmopolitan Constitutionalism](#)’ developed by Kumm (or ‘[European Constitutionalism beyond the State](#)’) is a very pertinent example of a vision which

isolates government from democratic politics – it (seemingly) embraces pluralism and entrenches itself in a thick set of substantive and procedural norms. It presents itself as a mere ‘cognitive’ structuring frame in which legal and political practice unfolds. This over-arching frame is anchored in universal moral ideals embedded in respective European field of shared values (i.e. human dignity, the rule of law and respect for human rights) which are in their turn embedded in the EU’s legal order and by their very nature not dispositive but immanent in the concept of EU law itself. That which Kumm presents as a mere ‘structuring device’ nonetheless ensures the optimisation of the uniform application of EU law by providing a framework for ‘mutual deliberative engagement’. Even though it presents itself as a mere frame of reference, it fiercely subsumes everything under its frame of reference and directs the field for decision making – it tries to colonize the entire discursive field of the European project.

This entire apparatus therefore builds towards a decision that had, to a large extent, been determined even before the case was made subject to it, and the same time avoids the need to offer deeper substantive justification – paradoxically, justification by way of substantive values is at the end more superficial. This ‘structuring device’, by way of reducing national legal orders and competing claims for legitimate European project to components in a larger frame of ‘mutual deliberative engagement’ on shared values, transforms European constitutions into “soft law” and allows for a new paradigm to be introduced, one which is, under the ‘cognitive’ structuring frame is governed by huge increase of arbitrariness and self-referential logics. What has consequently emerged is a new assemblage of power capable of dictating standards and norms that increasingly restrict the field of action of any politics, a web of soft law and standards of governance, best practices, and administrative procedures.

And when the market begins to function as a focal point of our deliberations it immediately begins to produce specifically demarcated sets of authoritative values, concerns and interests; other forms of judgment are displaced as possible modes of evaluative discernment – the epistemological mechanisms of the economy become the practice of judgment as it brings out a utilitarian rationality to bear on all practices of government and thereby transforming the very meaning of “nature” to refer to the specific logic at work in governmental practices. This is how “the financial stability of the euro area as a whole” becomes the only acceptable mode of decision making that channel and articulate the needs of financial capital making its command immediately effective.

This crucial transformation of our democratic landscape replaces the social contract with the market. Once the market principles manage to capture the tools with which we decided to build our European project, namely the law and European constitution, we begin to imagine Europe according to the social rationality of neoliberalism. Codification of something akin to a ‘cognitive frame of reference’ thus amounts to an “objectification” or “crystallization” of divisions that could otherwise only be generated spontaneously, since it implies a principle which can be applied to particular cases, without a remainder. In this manner, the decision making process is transposed onto a body of neutral, widely shared principles enforced by a neutral,

beyond the state, body. Our laws and our lives are interpreted, applied, and typically produced by a body of trained experts, and these processes are restricted to an institutional arena which establishes the very terrain of any public deliberation, the scope and limits of what might be undertaken politically or/and symbolically. Recall that Kumm characterizes the development of constitutional law in the EU as an experimentalist process in which, against the backdrop of polyarchic decision-making, the ECJ establishes framework rules; national courts conditionally apply them in differing ways, however differences are gradually contained and resolved in iterated exchanges between the ECJ and national legal systems.

The idea of Constitutionalism beyond the state perfectly matches the essentially non-political, economic arrangement that has clothed itself in political discourses of human rights, rule of law and democracy. The forms and procedures put forward by Kumm et.al. conceal the initial lack of substance and proximity with the life of Europeans and their daily dealings and the relations which the framework they were designed to merely formalize. The Union postulates the a-priori conditions of unity which do not dynamically (organically) emerge from within the heat of political life – unity appears as extraneous layers superimposed on the disarray of European communities. What remains, within the framework the European Union, is an expression without anything to express, devoid if not of meaning then of a connection to the sources of meaningfulness. The relegation of constitutional substance to the background and its substitution with constitutional details played out in a very formalistic register is able to substantiate the highly formal institutional arrangement where unity does not actually exist and which is not in any way bound to the texture of political existence.

In the new global constitutional order, this economic theology has replaced the political one. We found a new “nomos”, the nomos of austerity. The austerity paradigm became the modern version of the fight against the katechon in the medieval Christian Roman Empire, and the ultimate political justification. This perhaps explains the radical change in the European constitutional and symbolic landscape, where the rise of the new “holy alliances” against the crisis of the common currency has to be fought because “there is no alternative”. Consequently, this framework regulates our very ontological freedom. The common political identity of Europeans is assumed with the help of the very same structures designed for the de-politicization of public affairs.

The “beyond the nation state milieu” as envisaged by Kumm also creates a space for huge flexibility of “governance” and for the development of multi-level regulations which would have been impossible at the nation state level. These “beyond-the-state” arrangements imply a common framework of shared values, founded upon an institutional configuration dominated by a particular rationality. This post-political frame, the technocratic dream of pure post-politics, reduces the project of Europe within the “givens” set out by the principles which serve austerity paradigm. The power of post-political democracy resides, in other words, in the declaration of its impotence to act politically which is ultimately reflected in the institutional configurations. Although the formal configuration of democracy is still intact, there is a proliferating arsenal of new processes that bypass, evacuate

or articulate with these formal institutions. The European project is slowly being transformed into a meaning given by investment banking, determined by the practice of conducting “expertise” entirely disjoined from democratic decision-making. The crisis management becomes the real unifying thread of the constitutional development of the EU.

The idea of Europe is in crisis. So are European countries, and European Union scholarship is no exception. Our scholarly conceptualisations of the EU – as a community of law, as a democracy, as a post-national sui generis polity – are also in need of a radical rethink. We must decisively refuse the false choices offered to us, and instead redefine it altogether. In so doing, we will redefine ourselves.

